

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Federal-State Joint Board on
Universal Service

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CC Docket No. 96-45

REPLY COMMENTS OF SOUTHERN COMMUNICATIONS SERVICES, INC.

By: Carole C. Harris
Christine M. Gill
Kirk S. Burgee
John R. Dalton

McDermott, Will & Emery
600 13th Street, N.W.
Washington, D.C. 20005-3096
202-756-8000

Attorneys for Southern
Communications Services, Inc.

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Southern Communications Services, Inc. (Southern), by and through counsel, and pursuant to Section 1.415(c) of the Federal Communications Commission's rules, 47 C.F.R. § 1.415(c), hereby submits replies to the comments submitted in response to the FCC's *Further Notice of Proposed Rulemaking (FNPRM)* in the above captioned matter and to the *Petition for Clarification or Rulemaking* filed by Western Wireless Corporation.¹ Southern applauds the FCC's efforts to reduce the level of uncertainty associated with the Universal Service Fund reporting requirements. As is detailed more fully below, Southern urges the FCC to implement rules that will ensure that the long term reporting requirements are fair, accurate and competitively neutral, as they impact wireless providers. Additionally, Southern supports Western Wireless's goal of achieving competitive equity in the distribution of high cost support to Eligible Telecommunications Carriers (ETCs) that are not incumbent local exchange carriers (ILECs).

¹ *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking (released October 26, 1998); *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-

I. Statement of Interest.

1. Southern owns and operates the largest centrally switched, state-of-the-art digital 800 MHz SMR system in the world, with an authorized service area of more than 120,000 square miles. The service area covers virtually the entire states of Alabama and Georgia, a significant portion of Mississippi and parts of Florida and the surrounding states. Southern's system provides internal communications for its parent, Southern Company's five operating companies and also provides service to a large, growing external customer base.

2. Southern offers three distinct types of wireless service to its customers in various service packages: dispatch service, paging, and interconnected service. Southern's dispatch service is used by Southern's customers primarily for local or intrastate communications related to their business, industrial, and public safety-related functions. While Southern does provide interconnected wireless services, more typical of cellular, the vast majority of the system's minutes of use are dedicated to dispatch communications. Although Southern's interconnected service involves a higher level of interstate traffic than dispatch service, it does not represent a substantial portion of the overall traffic on the network.

3. As a competitive provider of telecommunications service, Southern has a strong interest in the FCC's implementation of the universal service provisions of the Telecommunications Act of 1996. Southern fully supports the important objective of ensuring the availability of telecommunications and information services in all regions of the United States. Equally important, however, is the objective of ensuring that contributions to the

45, *Western Wireless Corporation Petition for Clarification or Rulemaking* (filed October 15, 1998).

respective Universal Service funds are assessed on an equitable and nondiscriminatory basis, as specified in the 1996 Act.

II. Southern Agrees That the FCC Should Establish Safe Harbor Percentages for Wireless Providers and Also Allow Individualized Filing at the Option of the Provider.

4. Many of the comments filed in this proceeding support the use of safe harbor percentages, coupled with the option of individualized filings by providers, over the long term.² Southern agrees that this dual approach is the best means of addressing this difficult issue. As argued by Sprint PCS in its comments, providing safe harbor percentages while still allowing carriers to make individualized showings concerning their percentage of interstate traffic is a desirable approach because it promotes the dual goals of administrative ease and competitive neutrality.³

5. Furthermore, continuing to allow individualized filings ensures that carriers will have the flexibility to report revenues that vary from the safe harbor percentages where there is a justification for doing so. Maintaining this option will result in high level of accuracy in reporting and enable carriers to make a determination as to which is the most cost-effective, accurate approach.

6. As PCIA correctly points out, the FCC should not adopt an overly harsh stance in connection with providers who report based on their own individualized revenue studies.⁴ Nor should the rules require a provider desiring to make an individualized filing to seek a waiver.

² See Comments of Nextel at 7; Comcast at iii; GTE at 3, 7; Sprint PCS at 3-6; CTIA at 3-6; PCIA at 5-9; Omnipoint Communications at 2-5; SBC Communications at 2-4.

³ See Comments of Sprint PCS at 3-5.

⁴ See Comments of PCIA at 10.

Either of these measures would unnecessarily undermine the viability of an individualized filing alternative.

7. Instead, the FCC should implement rules that permit carriers to report interstate revenues based either on the safe harbor percentages or upon a good faith determination, without requiring advance FCC approval to make the election or imposing other affirmative reporting requirements. Southern submits that the FCC's interim requirement that carriers document their method used, and make their documentation available to the FCC upon request, is appropriate for adoption in the long term.

8. Southern agrees with Nextel that the Commission should not implement common market reporting requirements, such as requiring carriers to report on an MTA-by-MTA basis.⁵ Southern's service area, for example, is not configured on an MTA basis and therefore reporting revenues on this basis would not be possible.

III. The Interim Maximum Benchmark of 15% is Not an Accurate Proxy for CMRS Interstate Service.

9. The FCC has determined, as an interim measure, to apply a safe harbor percentage of 15% to cellular, broadband PCS and digital SMR providers.⁶ This figure is based upon the traffic reported by wireline carriers for purposes of the Dial Equipment Minutes weighting program.⁷ Southern agrees with those comments that contend that this figure

⁵ See Comments of Nextel at 8.

⁶ *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, FCC 98-278 (MO&O) at ¶15 (released October 26, 1998).

⁷ MO&O at ¶ 13.

overstates the level of interstate traffic carried by CMRS providers in general.⁸ The FCC should not use this figure as the safe harbor percentage for CMRS providers in the long term.

10. As reflected in the initial comments in this proceeding, there are fundamental differences between CMRS and landline service such that interstate calling makes up less of CMRS carriers' overall traffic. CTIA points out, for example, that the data obtained to date by Common Carrier Bureau's Industry Analysis Division demonstrate that wireless interstate traffic constitutes only 5% to 6% of wireless traffic.⁹ These figures are more in line with Southern's experience on its digital SMR system. For these reasons, Southern urges the FCC to adopt a long term safe harbor percentage that is substantially less than the proposed 15% interim safe harbor figure. In this regard, Southern agrees with CTIA that the FCC should set the benchmark in the range of 5-6%.

IV. Safe Harbor Percentages Should be Applied to Classes of Service, Rather Than Providers.

11. In light of the FCC's objective of eliminating competitive inequities in the reporting process,¹⁰ the FCC should permit providers to apply the safe harbor percentages to the specific classes of service that they offer. As indicated, Southern offers two distinct types of voice service to its customers, digital dispatch, which in many respects is comparable to analog SMR, and interconnected mobile telephony, which more closely resembles cellular service. As

⁸ See Comments of United States Cellular Corporation at 3-8; CTIA at 6-8; GTE at 9; Petition for Reconsideration of Small Wireless Carrier Group at 5.

⁹ See Comments of CTIA at 7-8.

¹⁰ FNPRM at ¶ 18.

the FCC has already recognized, these services have dramatically different levels of associated interstate traffic.¹¹

12. Allowing providers to apply individual safe harbor percentages to defined services, rather than applying one percentage to their services as a whole, will maximize the accuracy of the reporting process and thereby promote Congress' and the FCC's goal of competitive neutrality in the administration of the federal universal service program. In Southern's case, this will not involve a significant departure from the course that the FCC has selected in the interim.

13. The FCC has made determinations as to the percentages applicable to PCS, cellular and digital SMR service (15%), as well as for paging (12%) and analog SMR service (1%). As indicated above, the FCC should adopt safe harbor percentages for these types of services in the long term that accurately reflect their associated levels of interstate traffic. The FCC should also make clear that carriers that provide more than one type of service will be entitled to the benefit of the safe harbor reporting methodology if they report an overall interstate revenue figure that is based on the combined application of the safe harbor percentages applicable to each respective service.

V. The Commission Should Not Establish Minimum Local Usage Requirements for ETCs in Competitive Markets.

14. The *FNPRM* requests comment on whether and to what extent the FCC should require CMRS providers to offer some minimum amount of local usage as part of a basic package in order to be eligible for universal service support.¹² Southern acknowledges that

¹¹ *MO&O* at ¶¶ 10-15.

¹² *FNPRM* at ¶ 50.

regulation of local calling plans is necessary in areas served by only one provider. With respect to competitive markets, however, Southern agrees with those commenters who argue that minimum local usage requirements are unnecessary and counterproductive.¹³

15. Because universal service support is portable among carriers, ETCs will receive support from the high cost, low income fund only to the extent that they are able to attract and retain subscribers. In a competitive market, a carrier who does not offer the type of services desired by consumers, at prices that consumers are willing to pay, will be less able to build and maintain a customer base than those carriers who are responsive to their subscribers' needs. Market forces will be adequate to ensure that consumers receive the type of service they desire at competitive rates. Therefore, federal regulation of the terms, conditions, and prices offered by wireless ETCs in competitive markets is unnecessary.

16. Such regulation is also fundamentally contrary to the procompetitive, deregulatory purposes of the Telecommunications Act of 1996. Southern agrees with the comments of CTIA that requiring CMRS providers in competitive markets to offer service packages based on FCC-specified terms and conditions will tend to inhibit innovative marketing of wireless services and reduce consumer choices.¹⁴ Given the likelihood that local usage requirements will distort competition, the Commission should not impose them where they are unnecessary – *i.e.*, in markets served by more than one provider.

17. If, however, the Commission determines that it must establish a minimum local usage requirement for ETCs, then Southern would urge the Commission to adopt flexible standards such that a CMRS provider could satisfy the requirement with a service package

¹³ See Comments of Sprint PCS at 7-16; CTIA at 14-16; Omnipoint Communications at 9-10; Ameritech at 5-6; Western Wireless at 21-26.

¹⁴ See Comments of CTIA at 15.

comprised of either a minimum number of minutes or calls offered at a flat-rate. Southern doubts, however, that such requirements can be accurately based on average usage rates or prices for wireline service. Particularly in rural areas, the value of wireless service is not necessarily determined exclusively by the price of a number of local minutes or calls. As Western Wireless observes, CMRS customers may reasonably value the benefits of mobility more than a certain number of flat-rated minutes.¹⁵ Indeed, travelers in remote areas may be willing to sacrifice a certain number of flat-rated minutes in favor of the benefits mobile service in light of both increased travel times and safety considerations.

VI. The FCC Must Allow CMRS Providers to Designate Their Own Service Areas for the Purposes of Providing Basic Service and Receiving Universal Service Support.

18. Southern submits that CMRS providers should be allowed to designate their own service areas for the purpose of providing basic service. If CMRS providers are forced to provide coverage to service areas based upon an ILEC's existing infrastructure, they will be at a marked competitive and technological disadvantage. Requiring a CMRS provider to establish a contour co-extensive with an ILECs service territory is not rational given the technical characteristics of the two types of systems and would likely require unnecessary capital expenditures that would produce no appreciable benefit for the CMRS provider or consumers.

¹⁵ See Comments of Western Wireless at 23.

VII. Southern Supports the Petition of Western Wireless and Urges the Commission to Eliminate the Disparity in the Distribution of High Cost Support to ILECs and Non-ILEC ETCs.

19. Southern believes that Western Wireless has identified an inequity that must be addressed. Under the existing rules for distribution of high cost support to ETCs, both ILECs and non-ILEC ETCs are required to report each July 31st to the National Exchange Carrier Association (NECA) the number of working loops they served in each study area as of December 31st of the prior year. This number determines the amount of high cost support they will receive in the following calendar year.

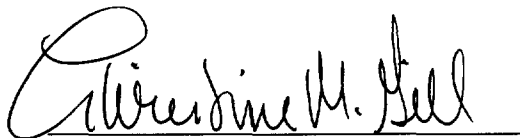
20. However, the Commission's rules provide that ILECs may provide NECA with updated information quarterly and that the updated information will be used to determine the ILEC's high cost support. The rules provide no such opportunity for non-ILEC ETCs to update the information they have provided to the Universal Service Administrative Corporation. This can result in ILECs realizing a higher percentage of their high cost support more quickly than non-ILEC ETCs. This regulatory disparity obviously violates the principle of competitive neutrality. The Commission should therefore equalize the reimbursement rights of ILECS and non-ILEC ETCs.

VIII. Conclusion.

For the reasons set forth above, Southern recommends that the Commission establish a safe harbor percentage for CMRS providers at a level between 5% and 6%, but allow carriers to report smaller percentages of interstate traffic if they are able to prove that the percentage of interstate traffic on their systems is below the Commission's safe harbor level. Southern also urges the Commission to allow CMRS providers to designate their own service areas for the purposes of providing basic service and to report on the basis of class of service, if appropriate. Southern believes that the Commission should grant the petition of Western Wireless and adopt uniform reimbursement procedures for all carriers eligible for support from the high cost fund. Finally, Southern submits that local usage requirements for ETCs are unnecessary in competitive markets. However, should the Commission find that local usage requirements are necessary, the requirements ought to be modest and flexible.

Respectfully submitted,

SOUTHERN COMMUNICATION SERVICES, INC.

A handwritten signature in cursive script, appearing to read "Christine M. Gill", written over a horizontal line.

Carole C. Harris
Christine M. Gill
Kirk S. Burgee
John R. Dalton

McDermott, Will & Emery
600 13th Street, N.W.
Washington, D.C. 20005-3096
202-756-8000

Attorneys for Southern Communications Services, Inc.

Dated: January 25, 1999

CERTIFICATE OF SERVICE

I, Sandy Baldwin, a secretary at McDermott, Will & Emery, do hereby certify that on this 25th day of January 1999, a copy of the foregoing "Reply Comments Of Southern Communications Services, Inc." was hand-delivered to each of the following:

William E. Kennard, Chairman
Federal Communications Commission
445 12th Street, S.W., 8th Floor
Washington, D.C. 20554

Susan Ness, Commissioner
Federal Communications Commission
445 12th Street, S.W., 8th Floor
Washington, D.C. 20554

Michael Powell, Commissioner
Federal Communications Commission
445 12th Street, S.W., 8th Floor
Washington, D.C. 20554

Gloria Tristani, Commissioner
Federal Communications Commission
445 12th Street, S.W., 8th Floor
Washington, D.C. 20554

Harold Furchtgott-Roth, Commissioner
Federal Communications Commission
445 12th Street, S.W., 8th Floor
Washington, D.C. 20554


Ms. Magalie R. Salas
Secretary
Federal Communications Commission
445 12th Street, S.W., 8th Floor
Washington, D.C. 20554

Ms. Sheryl Todd
Accounting Policy Division
Federal Communications Commission
8th Floor
2100 M Street, N.W.
Washington, D.C. 20554

Mr. Timothy Fain
OMB Desk Office
10236 NEOB
725 17th Street, N.W.
Washington, D.C. 20503

Ms. Judy Boley
Federal Communications Commission
Room 234
1919 M Street, N.W.
Washington, D.C. 20554

ITS
1231 20th Street, N.W.
Washington, D.C. 20036


Sandy Baldwin